

Memorandum of Agreement

**State of California
Department of Toxic Substances Control**

and

**The United States Environmental Protection Agency
Region IX**

**Memorandum of Agreement
Between
The State of California
Department of Toxic Substances Control
and
The United States Environmental Protection Agency
Region IX**

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I. General

A. This Memorandum of Agreement ("Agreement") is executed between the California Department of Toxic Substances Control ("DTSC") and Region IX of the United States Environmental Protection Agency ("EPA"). This Agreement is being entered into pursuant to 40 CFR 271.8 (CFR is the Code of Federal Regulations) and sets forth policies, responsibilities and procedures for the administration and enforcement of the State of California's RCRA hazardous waste program ("Authorized program") authorized under section 3006 of the federal Resource Conservation and Recovery Act ("RCRA") of 1976, as amended. This Agreement further sets forth the manner in which DTSC and EPA will coordinate in DTSC's administration and enforcement of the Authorized program and EPA's administration of the provisions of the federal Hazardous and Solid Waste Amendments of 1984 ("HSWA") for which DTSC is not authorized. (For purposes of this agreement, references to RCRA include the HSWA.)

B. This Agreement is entered into by the Director of the California Department of Toxic Substances Control ("Director" or "DTSC") and the Regional Administrator, EPA Region IX ("Regional Administrator" or "EPA"). This MOA does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not party to this agreement, against DTSC or EPA, their officers or employees, or any other persons. This MOA does not direct or apply to any person outside of DTSC and EPA.

C. The parties will review the Agreement jointly during preparation of the annual DTSC Grant Workplan ("DTSC Workplan"), in connection with grant funding under section 3011 of RCRA, and other times as appropriate.

D. This Agreement may be modified upon the initiative of either party in order to remain consistent with modifications made to the Authorized program or for any other purpose mutually agreed upon. Any revisions or modifications to this Agreement must be in writing and must be signed by the Director and the Regional Administrator. This Agreement including any amendments made thereto, shall remain in effect until such time as authorization of DTSC's program is withdrawn or voluntarily transferred to EPA according to the criteria and procedures established in 40 CFR section 271.22 and 40 CFR section 271.23.

E. This Agreement is being executed to update DTSC's RCRA authorization for all its authorized provisions of RCRA and HSWA. DTSC agrees to keep its RCRA authorized program current as outlined in 40 CFR 271.21(e)(2) and (3) and 271.21(g)(1).

F. This Agreement shall be executed by the Director or the Director's designee and the Regional Administrator or the Regional Administrator's designee and shall become effective when it is signed by both parties.

G. The Director and the Regional Administrator may delegate any of the duties established by this agreement unless specifically noted otherwise in the Agreement.

H. This memorandum of agreement will be supported by the following individual programmatic Memoranda of Understanding: the Information and Data Exchange MOU, the Corrective Action MOU, the State/EPA Enforcement Agreement (if developed in accordance with page 14, item IX.B.10.), and the Authorization MOU. DTSC and EPA agree to implement the program in accordance with this Agreement and these MOUs. In the event of a conflict, the provisions of the Memorandum of Agreement control.

II. Statutory Authorities

A. Nothing in this Agreement shall be construed to restrict in any way EPA's authority to fulfill its oversight and enforcement responsibilities under RCRA (Solid Waste Disposal Act, 3006(e), 3008(a), 3008(h), 3013, 7003) and any other applicable federal statute. Nothing in this Agreement shall be construed to contravene any provision of 40 CFR Part 271.

B. EPA has authorized the California Department of Toxic Substances Control (DTSC) to implement the RCRA authorized program under 40 CFR 271.6. DTSC retains ultimate responsibility for the RCRA authorized program even if specific tasks are assigned to other state or local agencies.

III. Policy Statement

A. Each of the parties to this Agreement is responsible for ensuring that its obligations under RCRA are met. Upon the granting of final authorization by EPA, DTSC assumes primary responsibility for implementing the RCRA hazardous waste program within its boundaries. EPA retains its responsibility to ensure full and faithful execution of the requirements of RCRA, including direct implementation of any provisions of the HSWA which DTSC is not authorized to implement. The Director and the Regional Administrator agree that the Authorized program is the responsibility of DTSC, but EPA and DTSC agree to maintain a high level of cooperation and coordination between their respective staffs in order to assure effective administration of the Authorized program.

B. Section 3006(g) of RCRA provides that, with the exception of section 3006(f) of RCRA, hazardous waste requirements and prohibitions promulgated pursuant to the HSWA are applicable in authorized States at the same time that they are applicable in unauthorized States. While EPA retains responsibility for the direct implementation of those provisions of the HSWA which DTSC is not authorized to implement, it is the intention of EPA and DTSC to coordinate the implementation of such provisions to the greatest degree possible. DTSC agrees to actively develop program capabilities for those provisions while concurrently adopting necessary statutory and regulatory changes.

C. EPA will oversee implementation of the Authorized program in order to ensure full execution of the requirements of RCRA, to promote national consistency in implementation of the RCRA hazardous waste program, to allow EPA to report to the President and Congress on the achievements of the RCRA hazardous waste program, and to encourage the states and the EPA to agree on desirable technical support and targets for joint efforts to prevent and mitigate environmental problems associated with the improper management of RCRA hazardous wastes. Oversight will be accomplished by EPA through review of DTSC reports, as agreed upon in the Annual Workplan, including permit overview, compliance and enforcement overview, annual review of the DTSC program, completed output reviews and oversight and site (independent) inspections. EPA shall endeavor to convey comments and criticism to DTSC within a time frame and in a manner that will allow DTSC to consider EPA input and respond without disrupting the administration and enforcement of the DTSC program.

D. EPA and DTSC intend to make decisions based on sound science and to implement the Quality Assurance Project Plan (QAPP). EPA and DTSC agree to take positive steps to ensure that the data used to make decisions are of acceptable quality regardless of whether the data were generated by EPA, DTSC, other agencies, or regulated facilities.

E. EPA will discuss national and regional initiatives with DTSC and offer DTSC the "right of first refusal" to implement them. If DTSC chooses not to implement a national or regional initiative, or fails to implement the initiative within an agreed upon time frame, DTSC agrees to be responsive to EPA's requests for information necessary for EPA to implement the initiative.

F. DTSC shall endeavor to discuss state initiatives with EPA. If a state initiative contributes to the implementation of the RCRA program, EPA agrees to be responsive to DTSC's requests for information necessary for the State to implement the initiative, and to consider assisting DTSC in implementing the initiative, as requested by DTSC.

IV. State Program Review

A. General

1. The Regional Administrator will assess DTSC's administration and enforcement of the Authorized program on a continuing basis for equivalence and consistency with RCRA, this Agreement, the DTSC Workplan, all applicable federal requirements and policies (where consistent with the State Administrative Procedure Act) and the State's policies. This assessment will be accomplished by EPA review of information submitted by DTSC in accordance with this Agreement and the DTSC Workplan.
2. The Regional Administrator may also consider, as part of this regular assessment, written comments about the administration and enforcement of the Authorized program that are received from regulated persons, the public, and federal, state, and local agencies. Copies of any such comments received by the Regional Administrator will be provided to DTSC.
3. To ensure effective program review, DTSC agrees to allow EPA access to all Authorized program files and other information requested in writing to the Director or the Director's designee by the Director of the Waste Management Division Region IX or the Director's designee deemed necessary by EPA for reviewing DTSC's administration and enforcement of the Authorized program. EPA agrees to limit such access and requests, whenever possible, to information related to RCRA regulated activities. EPA agrees that it will take into account any resource implications of such a request when accessing information under this section, and that resource limitations may affect the time frame for accessing the information.
4. Review of DTSC files may be scheduled at quarterly intervals. Program review meetings between DTSC and the Regional Administrator or their designees will be scheduled at reasonable intervals not less than annually to review specific operating procedures and schedules, to resolve problems and to discuss mutual program concerns.
5. Program review meetings will be scheduled at least fifteen days in advance unless otherwise jointly agreed.
6. Dispute Resolution Process for grant related disputes. EPA and DTSC agree to establish a dispute resolution process which allows issues to be raised to senior management in both agencies when deemed necessary by management in either agency with respect to grant related disputes. The dispute resolution process shall be consistent with 40 CFR §31.70.
7. Dispute Resolution Process for program related disputes. EPA and DTSC agree to pursue informal, staff-level dispute resolution to the maximum extent possible. If an issue cannot be resolved, it will be raised to the second level supervisors. If it cannot be resolved, it will be raised to the third level supervisors. If it cannot be resolved, it will be raised to DTSC and EPA Division directors.
8. Program evaluations conducted by EPA will consider the entire authorized program. The focus will generally be on program-wide issues such as conformance with national guidance and performance expectations. Program evaluations will continue to offer facility specific comments when necessary.

B. Identification of Priority Activities

1. EPA will not categorically exclude activities allowed under national program guidance from the DTSC Workplan.

2. DTSC is responsible for setting DTSC Workplan priorities for funding under the RCRA grant. DTSC shall review U.S. EPA guidance and determine priorities in accordance with the OSWER Consolidated Guidance and EPA processes. EPA shall comment on the draft priorities and DTSC will prepare a draft workplan which shall include a limited number of EPA high priority facilities which are identified by name. EPA shall comment on the draft workplan. DTSC shall make the final decision on priorities and write justifications in accordance with the EPA RIP-flex policy. EPA retains authority to determine whether the workplan outputs are consistent with the criteria provided in 40 C.F.R. §§ 35.141 and 35.143.

3. DTSC and EPA agree that DTSC will use a risk-based ranking system that incorporates the RIP and other relevant guidance and information to develop DTSC workplans. Facility rankings shall be reassessed as necessary based on the grant workplan.

V. Information Sharing

A. General

As the respective information needs of DTSC and EPA evolve, changes to this section of the Agreement may be appropriate. During the annual review of this Agreement each April, DTSC and the Regional Administrator will carefully examine the following information sharing provisions to determine if revisions are necessary.

B. EPA

1. EPA will inform DTSC as promptly as possible of the content and meaning of federal statutes, regulations, guidelines, standards, policy decisions, directives, and any other factors that affect the RCRA hazardous waste management program. EPA will provide, as timely as possible, DTSC with copies of all guidance documents and directives issued by EPA relating to the RCRA program, including new and previously issued documents. EPA will also provide general technical guidance to DTSC. EPA will share with DTSC any national reports developed by EPA from the data submitted through Authorized program reporting requirements. EPA will make resource information available to DTSC. This information will include regional grant funding, contract resources and Full Time Equivalent (FTE) budgeted for the RCRA program. EPA agrees to facilitate requests from DTSC for clarification and interpretation of, and policy guidance on, federal laws which establish and implement the federal program.

2. DTSC and EPA agree to share and coordinate the exchange of information. Upon request, DTSC will provide the following:

- a) Part A and Part B RCRA Permit Applications
- b) Copies of draft permits, proposed RCRA permit modifications, public notices
- c) Copies of final RCRA permits, RCRA permit modifications, and RCRA permit appeals
- d) Notices of RCRA permit denials
- e) Enforcement Orders
- f) Corrective Action proposed remedy selection made under the provision of a permit or an enforcement order.

3. All references to permits, permit applications, draft permits, permit approvals, permit modifications, permit appeals, and permit denials in this agreement are intended to refer only to those permits which are within the auspices of the authorized program.

4. To ensure effective coordination and consistent implementation of RCRA provisions within the State, EPA agrees to provide DTSC copies of reports and other existing written data from compliance inspections and subsequent enforcement actions when requested by DTSC, subject to the regulations in 40 CFR section 2.118.

5. EPA will forward, on a monthly basis, notification information (including newly assigned EPA identification numbers) submitted by persons in the State who file such forms after the effective date of this Agreement. This information will be submitted to the Director within 10 days of the end of each month for the preceding month.

6. Identification numbers

- a) EPA agrees to assign Identification Numbers to all handlers required to obtain an Identification Number pursuant to RCRA, unless DTSC and EPA agree that DTSC may perform this function.
- b) The State will assign State Identification Numbers to generators and handlers of hazardous waste who are not required to obtain EPA Identification Numbers pursuant to RCRA (this includes assignment of numbers to generators and handlers outside California who must meet California regulations to operate inside California).
- c) EPA will send Identification Number application forms submitted by generators and handlers of hazardous waste who are not required to obtain EPA Identification Numbers to DTSC for processing. If DTSC determines that such generators or handlers need an EPA identification number, the forms will be returned to EPA.

7. EPA will make available to DTSC other relevant information, as requested, which DTSC needs to implement its authorized program. Information provided to DTSC will be subject to the terms of 40 CFR Part 2.

8. EPA agrees to provide DTSC with copies of all notification of proposed transfrontier movement of waste regarding import of waste into the U.S. which EPA Region IX receives from EPA headquarters pursuant to 40 CFR 262.83, along with copies of the associated consent or objection by the Region to such shipments. EPA Region 9 will also forward copies of export notifications pursuant to 40 CFR 262.83 if, in the future, the Region receives these documents from EPA headquarters. These copies will be transmitted within 30 calendar days of receipt by EPA Region 9 to DTSC at the mailing address provided by DTSC.

C. DTSC

1. DTSC agrees to provide EPA information as outlined in the Information and Data Exchange MOU. DTSC will forward core data elements monthly in a mutually agreed upon format. EPA will input the data into the RCRAInfo system. DTSC is responsible for the quality of its data; and EPA is responsible for uploading the information to the EPA HQ RCRAInfo "oversight" database.

2. In order to correctly identify the handler for which DTSC is providing updated information, upon request, DTSC agrees to provide EPA the following information for each RCRA handler. The anticipated frequency is once a year, unless circumstances require a different schedule.

- a) Name and location of the handler.
- b) Mailing address of the handler.
- c) Name and telephone of the handler's contact person.
- d) Type of hazardous waste activity including waste codes.
- e) Process codes (for handlers who treat hazardous waste).
- f) EPA identification number.

3. DTSC agrees to inform the Regional Administrator in advance of any proposed program changes which would affect DTSC's ability to implement the Authorized program. Program changes of concern include modification of the State's legal authorities (i.e., statutes, regulations and judicial or legislative actions affecting those authorities), modifications of Memoranda of Agreement or Understanding with other agencies, and modifications of resource levels (i.e., available or budgeted personnel and funds impacting DTSC's ability to carry out the Authorized program.) DTSC recognizes that revisions to the Authorized program must be made in accordance with the provisions of 40 CFR section 271.21, and, that until approved by EPA, revisions are not adopted as RCRA Subtitle C requirements.

4. Annually, or at other mutually agreed upon intervals, through development of the DTSC Workplan DTSC and EPA will agree on the types and frequency of reports DTSC will make in order for EPA to maintain oversight of the implementation of the Authorized program. Such reporting may include, but is not limited to the following:

- a) Compliance monitoring and enforcement information;
- b) Information indicating the status of DTSC's permitting, closure, post-closure, facility financial assurance, ground-water monitoring activities, and corrective action; and
- c) Other information not addressed in a. or b. designed to describe the status of the authorized program.
- d) A biennial report to the extent agreed upon in the DTSC Workplan.
- e) A copy of any application and decision regarding a facility's request for a variance from RCRA regulated activities.
- f) Status of national initiatives implemented by the DTSC.

5. Upon request, DTSC agrees to provide EPA a copy of any decisions regarding requests made by RCRA hazardous waste handlers to change their classification (e.g., requests to be deleted as generators but to retain their facility status) and facility requests to make on-site changes prior to permit issuance (e.g., requests to handle additional wastes not identified on the facility's original notification and RCRA Part A Permit Application). Additionally, upon request, DTSC will provide EPA with copies of facility permit applications, revisions and additions to those applications, draft permits, final permits, permit appeals, proposed permit modifications, and public notices.

6. The DTSC agrees to provide EPA copies of reports and other existing written data from compliance inspections and subsequent enforcement actions when requested by EPA. The DTSC also agrees to provide the EPA with copies of other reports, in existence at the time of EPA's request, on any RCRA activity within the State.

7. DTSC agrees to provide any information as necessary for EPA to carry out its oversight responsibilities, when requested in writing to the Director or the Director's designee by the Regional Administrator or the Regional administrator's designee, within a mutually agreed upon time frame. (In emergency circumstances where it is not practicable to provide a written request, EPA shall not be required to provide a written request.) Unless otherwise agreed upon, the above information shall be sent to the Director of the Waste Management Division at Region IX. EPA agrees that it will take into account any resource implications of such a request when requesting information under this section, and that resource limitations may affect the agreed upon time frame for providing the information.

8. DTSC will make resource information available to EPA for DTSC's authorized RCRA program.

9. DTSC semiannual reports shall provide the number of commitments met and identify the relevant facilities by name.

D. Site visits

EPA is responsible for maintaining reliable national data on hazardous waste management. This data is used to report to the President and Congress on the achievements of the RCRA hazardous waste program and to support EPA's regulation development efforts. Whenever EPA determines that it needs to obtain certain information, EPA will first seek to gain this information from DTSC. DTSC agrees to supply the Regional Administrator with this information if readily available and as resources allow. If DTSC is unable to provide the information or if it is necessary to supplement the DTSC information, EPA may conduct a special survey or perform information collection site visits after notifying DTSC. EPA will share with DTSC any national reports developed by EPA as a result of such information collection.

E. Emergency Situations

1. Upon receipt of any information that the storage, treatment, transportation, disposal, or other handling or management of hazardous waste is endangering human health or the environment, the party in receipt of such information shall immediately notify by telephone the EPA and the State of the existence of such situation. Such notification shall follow the emergency procedures outlined in V.E.2. and V.E.3. for notifying the EPA emergency response phone line or the California Emergency Management Agency (CalEMA) phone line.
2. Upon receipt of information indicating that such a situation exists, the EPA representative shall immediately call the State's emergency response duty officer at (916) 255-6504 during daytime hours. After hours or if the information indicates that an emergency exists, the EPA will also call the California Emergency Management Agency (CalEMA), at (800) 852-7550.
3. Upon receipt of information indicating that such a situation exists, State representative of OES shall immediately call the Region IX Emergency Response/Spill Phone, (415) 300-2193.

F. Confidentiality

1. Any information obtained or used in the administration of the Authorized program shall be available to EPA upon request without restriction. If the information has been submitted to the State under a claim of confidentiality, DTSC must submit that claim to EPA when providing information. Any information obtained from a State and subject to a claim of confidentiality will be treated in accordance with the regulations in 40 CFR Part 2.
2. EPA agrees to furnish to DTSC information in its files which is not submitted under a claim of confidentiality or which has been determined by EPA to be non-confidential, and which DTSC needs to implement its program. Subject to the conditions in 40 CFR Part 2, EPA will furnish DTSC with information submitted to EPA under a claim of confidentiality which DTSC needs to implement its program. All information EPA agrees to transfer to DTSC will be transferred in accordance with the requirements of 40 CFR Part 2. EPA will notify affected facilities when such information is sent to DTSC.
3. EPA agrees to honor a State request to protect the confidentiality of information furnished by the State provided that the State marks the document as confidential and offers a rationale for the claim of confidentiality and provided that the EPA has the authority under the Federal Freedom of Information Act and 40 CFR Part 2 to withhold release of that information.

VI. Permit Issuance**A. EPA Permitting**

1. Upon authorization of future portions of the State program, EPA will suspend permitting activities for which DTSC has received authorization.
2. Whenever EPA adopts standards under HSWA for activities or wastes not currently covered by the authorized program, EPA may process RCRA permits in the State for the new or revised HSWA processes until DTSC has received final authorization for the new or revised HSWA standards. At the time the DTSC program is authorized for the new or revised HSWA standards, EPA will suspend any permitting activities in those areas. EPA will also transfer any pending permit applications, completed permits or pertinent file information to DTSC within thirty days of the authorization of new or revised elements of the DTSC program.
3. DTSC and EPA have agreed to a joint permitting process for RCRA permits (see section VI.D. of this Agreement) for the joint processing of RCRA permits for those provisions of the HSWA for which DTSC does not have authorization. As DTSC receives authorization for additional provisions of the HSWA, EPA will suspend issuance of Federal permits in the State related to those provisions.

B. EPA Overview of DTSC-issued RCRA Permits

1. EPA may comment on any RCRA permit application or draft RCRA permit. EPA's overview function will focus primarily on those facilities identified by DTSC and EPA in the DTSC's Multi-Year Permit Strategy, Annual Grant Workplan and Program Description.
2. EPA may comment in writing on any draft RCRA permit or proposed RCRA permit modification, whether or not EPA commented on the permit application. DTSC, when requested, will make every effort to submit copies of draft RCRA permits to EPA prior to the opening of the public comment period for that permit. At a minimum, a copy of the draft permit shall be given to EPA for review by the opening of the public comment period. Where EPA indicates in a comment that issuance, modification, reissuance, termination or denial of the RCRA permit would be inconsistent with the authorized program, or HSWA or non-HSWA provisions, EPA shall include in the comment:
 - a) A statement of the reasons for the comment (including the section of State or Federal law that supports the comment), and
 - b) The actions that should be taken by DTSC in order to address the comment (including the conditions which the permit would include if it were issued by EPA).
3. EPA shall send a copy of its written comments to the permit applicant.
4. EPA shall withdraw such comments when satisfied that DTSC has met or refuted its concerns and shall also provide the permit applicant with a copy of such withdrawal.
5. The Director or the Director's designee and the Regional Administrator or Regional Administrator's designee agree to meet or confer whenever necessary to resolve a disagreement between their staffs on the terms of a RCRA permit to be issued by DTSC.

6. Under section 3008(a)(3) of RCRA, EPA may terminate a State-issued RCRA permit in accordance with the procedures of 40 CFR Part 124, Subpart E, or bring an enforcement action in accordance with the procedures of 40 CFR Part 22 in the case of a violation of a State program requirement. In exercising these authorities, EPA will observe the conditions established in 40 CFR section 271.19(e).

C. DTSC Issuance of RCRA Permits

1. DTSC is responsible for expeditiously drafting, circulating for public review and comment, issuing, modifying, reissuing and terminating RCRA permits for those hazardous waste treatment, storage, and disposal facilities subject to the permit requirements of the Authorized program and shall do so in a manner consistent with RCRA, this Agreement, all applicable authorized program requirements, and DTSC's Program Description.
2. DTSC agrees to issue State hazardous waste facilities' permits to the owners or operators who have been issued an EPA but not a corresponding State hazardous waste permit upon modification or expiration of their EPA issued permits if the owner or operator meets the requirements of State law.
3. DTSC agrees to issue, modify and reissue all State hazardous facilities' permits in accordance with Article 9 of Chapter 6.5 of Division 20 of the California Health and Safety Code (H&SC) and the regulations in Chapter 21 of Division 4.5 of Title 22 of the California Code of Regulations (22 CCR) and to require compliance with all applicable provisions of Chapter 6.5 of Division 20 of the H&SC and Division 4.5 of 22 CCR as a condition of the permits.
4. DTSC agrees that if EPA notifies DTSC that a facility managing a RCRA hazardous waste is out of compliance with both a permit condition and a regulation which is more stringent than that permit condition and EPA requests that DTSC initiate a permit modification, DTSC will modify the facility's permit to replace the permit condition with the more stringent regulation.
5. DTSC agrees that any compliance schedules contained in permits it issues will require compliance with applicable standards pursuant to a specific schedule.
6. DTSC agrees to consider all comments EPA makes on permit applications and draft permits. DTSC will satisfy or refute EPA's concerns on a particular permit application, proposed permit modification, or draft permit in writing before issuing the permit or making the modification.

D. Joint Permitting Process

1. Pursuant to RCRA section 3006(g)(1), and in accordance with the HSWA, EPA has the authority to issue or deny permits, or portions of permits, to facilities in California on the basis of any of the requirements and prohibitions in or stemming from the HSWA for which DTSC has not received authorization until DTSC's program is amended to reflect those requirements and prohibitions and authorization of corresponding changes in DTSC's program are approved by EPA.
2. EPA and DTSC will adhere to the joint permitting process for the issuance of RCRA permits in California, as established in accordance with section 3006(c)(3) of RCRA.
3. Until DTSC is authorized to administer specific HSWA provisions, the EPA may issue portions of RCRA permits required by those amendments. However, DTSC reserves the right to issue State permits based on relevant portions of State law. Amendment of this Memorandum of Agreement or the execution of a separate Memorandum of Agreement may be required for authorization of any additional provisions of the HSWA.

E. Variances

1. As required by State statute, DTSC will not grant variances from federal requirements. A federal listed waste that is delisted will be eligible to be regulated as a non-RCRA waste. A generator of an EPA delisted waste stream is still subject to California's generator waste classification requirements. Generators who receive EPA issued variances or other types of exemptions will still be subject to applicable state requirements. Generators who receive exemptions or delistings under federal law may apply for a variance under the State's variance procedures.
2. DTSC will be able to grant generators variances from the definition of solid waste under 40 CFR 260.30 - 40 CFR 260.33 at the time DTSC is authorized for this part of the RCRA program, which shall be the date set out in the Federal Register notice of the EPA Regional Administrator's decision to grant this authorization to DTSC.

VII. RCRA Permit Administration

DTSC will administer any RCRA permits issued by the EPA which have no corresponding State hazardous waste facilities permit under the authority granted by Health and Safety Code section 25200 until such time as DTSC has issued a corresponding State permit. DTSC will also administer any RCRA permit issued by DTSC prior to the reversion of the RCRA program to EPA on January 31, 1986.

VIII. Corrective Action

- A. Although DTSC has the primary responsibility for implementing the corrective action part of the RCRA program under EPA oversight, EPA retains its authority under Section 3008(h) of RCRA to directly implement this part of the RCRA program. DTSC and EPA agree to implement corrective action in accordance with the Corrective Action Memorandum of Understanding.
- B. DTSC agrees that when it issues an order or a permit to a facility with an EPA issued 3008(h) order, DTSC will include the Corrective Action provisions of EPA's 3008(h) order or permit. EPA agrees that when DTSC issues an order or permit or enters into an enforceable agreement equivalent to an EPA 3008(h) order, EPA will terminate or withdraw its 3008(h) order in most cases.

IX. Compliance Monitoring and Enforcement**A. EPA**

1. Nothing in this Agreement shall restrict EPA's right to inspect any RCRA hazardous waste generator, transporter or facility or bring enforcement action against any person believed to be in violation of the Authorized program or believed to have a release of hazardous waste or constituent. Before conducting an inspection of a generator, transporter or facility, the Regional Administrator will, when practicable, give DTSC at least seven days notice of the intent to inspect in accordance with 40 CFR section 271.8(b)(3)(i). In case of an imminent hazard to human health or the environment, the Regional Administrator may shorten or waive the notice period.
2. The frequency of EPA oversight and training inspections will be specified in the DTSC Workplan. EPA will negotiate on an annual basis with DTSC the percentage of the DTSC's compliance inspections on which EPA will accompany DTSC.

3. The EPA may take enforcement action against any person determined to be in violation of RCRA in accordance with RCRA section 3008(a)(2). Prior to issuing a compliance order under section 3008(a), EPA will endeavor to give at least 30 days written notice to DTSC and consult with DTSC regarding the proposed enforcement action, except in emergencies when the EPA can take immediate action, and EPA will provide notice to DTSC as soon as practicable. EPA also retains its rights to issue orders and bring actions under sections 3008(h), 3013, and 7003 of RCRA and any other applicable federal statute.
4. After notice to DTSC, EPA may take action under section 3008 of RCRA against a holder of a State-issued permit on the grounds that the permittee is not complying with a condition of that permit. In addition, EPA may take action under section 3008 of RCRA against a holder of a State-issued permit on the grounds that the permittee is not complying with a condition that the Regional Administrator, in commenting on that permit application or draft permit, stated was necessary to implement approved State program requirements, whether or not that condition was included in the final permit. Prior to taking action under this section EPA will endeavor to give at least 30 days written notice to DTSC and consult with DTSC regarding the proposed enforcement action except in emergencies when the EPA can take immediate action, and EPA will provide notice to DTSC as soon as practicable.
5. Whenever EPA adopts standards for activities or wastes not currently covered by the authorized program, EPA will process and enforce RCRA permits in the State for the new or revised processes until DTSC has received final authorization for the new or revised standards.

B. DTSC

1. DTSC agrees to carry out a program for monitoring the generators, transporters, and facilities subject to the Authorized program, for compliance with applicable program requirements consistent with 40 CFR section 271.15. DTSC will conduct inspections, as agreed upon in the DTSC Workplan, to assess compliance with generator and transporter standards (including manifest requirements), facility standards, permit requirements, compliance schedules, and other program requirements, including HSWA requirements for which DTSC is not authorized. Compliance monitoring activities and priorities will be specified in the DTSC Workplan as developed using the process described in III B of the MOA, the DTSC's Program Description, as well as the State's Enforcement Response Policy.
2. In 1993 California passed a bill that established a program to consolidate six existing programs regulating hazardous waste and hazardous materials, including the hazardous waste generator compliance program. This program is implemented through local governments (CUPAs - Certified Unified Program Agencies). DTSC is a member of the multi-state-agency team which evaluates the performance of the CUPAs. DTSC and other team members from the State Water Resources Control Board, the Office of the State Fire Marshal, and CalEMA will conduct evaluations of a portion of the CUPAs every year. Evaluations are scheduled according to the date the CUPA was certified and subsequently the date of the last evaluation. Evaluations can also be triggered by complaints or agency concerns regarding CUPA performance.
3. CAL/EPA will generally assume the role of evaluation team leader for the CUPA evaluations of all six programs. Each evaluation team member is responsible for reviewing, inspecting, and preparing report language related to its program element and DTSC is responsible for reviewing compliance with Title 27 elements related to hazardous waste management.
4. The evaluation reports review implementation of the Unified Program according to the following program areas: self-audit, administrative, permitting, inspection, enforcement, fee system, reporting, and training.

5. DTSC also reserves its right to conduct independent inspections and oversight inspections as allowed by law. As a result of these inspections, DTSC will take appropriate enforcement response according to its established policies.
6. CUPAs report their inspections and compliance actions every quarter. A database collects and maintains this information. DTSC will analyze the data to evaluate CUPAs' compliance trends and program performance.
7. DTSC will review the appropriateness of CUPA inspection and enforcement decisions as part of their evaluations, according to State statutes, regulations, and policies adopted pursuant to RCRA that define when something is a violation, whether it is a major or minor violation, and provide direction on how to proceed.
8. DTSC also retains its authority to file enforcement actions in cases where a CUPA fails to take appropriate enforcement action.
9. In cases where a local or county agency does not wish to be a CUPA, DTSC may be designated the CUPA for that locality. DTSC's performance in the locality will be evaluated like any other CUPA.
10. DTSC agrees to take timely and appropriate enforcement action as defined in the State Enforcement Response Policy (ERP) against persons determined by DTSC to be in violation of generator and transporter standards (including manifest requirements), facility standards, permit requirements, compliance schedules, and other requirements of the Authorized program.
11. DTSC agrees to enforce as State permits any permits issued by EPA to owners or operators of facilities who have not been issued a corresponding State hazardous waste facilities permit.
12. DTSC will determine the relative priority of cases referred by EPA using the State ERP in deciding whether to take actions against persons determined by EPA to be in violation of generator and transporter standards (including manifest requirements), facility standards, permit requirements, compliance schedules, and other program requirements.
13. To the extent practicable, in conducting compliance evaluation inspections, DTSC agrees to review compliance schedules contained in federal enforcement actions, evaluate compliance with those schedules and take appropriate enforcement action in accordance with the State ERP.
14. Appropriate State enforcement response to violations of the Authorized Program are specified in the State Enforcement Response Policy and may include criminal, civil or administrative enforcement proceedings. Any civil penalty assessed, sought, or agreed upon by DTSC shall be appropriate to the violation, as specified in 40 CFR 271.16(c) and the California Code of Regulations (CCR) Title 22, section 66272.60 et seq.
15. DTSC agrees to maintain procedures for receiving and ensuring proper consideration of information about violations submitted by the public. DTSC agrees to retain all records pertaining to the authorized program for at least three years unless there is an enforcement action pending. In that case, all records will be retained until three years after such action is resolved.
16. DTSC agrees that it will not oppose intervention by any citizen in an action to enforce the State's hazardous waste control laws, where permissive intervention may be sought pursuant to a State statute or regulation.
17. The State ERP will continue to be revised to remain at least as stringent as any revised national ERP.

18. EPA and DTSC may agree to conduct activities in furtherance of this MOA through a State/EPA Enforcement Agreement.

X. Availability of Information (Section 3006(f))

A. General

DTSC agrees that in conformity with section 3006(f) of RCRA, and the Federal Freedom of Information Act (FOIA), DTSC will provide for the public availability of Authorized program information, and the protection of privileged information, maintained by DTSC regarding facilities and sites for treatment, storage and disposal of hazardous waste, so that such information is available to the public in substantially the same manner, and to the same degree, as would be the case if EPA administered the RCRA program.

B. Requests for Information

1. Pursuant to the FOIA and consistent with the California Public Records Act, DTSC agrees to make certain Authorized program information routinely available without a formal FOIA request. Examples of such information are final opinions or orders in case adjudications, State regulations, statements of Agency policy, and administrative staff manuals affecting the public. In addition, records prepared for routine public distribution will also be made available. Examples of such records are press releases, copies of speeches, pamphlets, and educational materials. DTSC may, however, charge a fee, as allowed by the California Public Records Act for copies of this information.
2. DTSC agrees to make reasonable efforts to assist a requestor in identifying Authorized program information being sought, and helping the requestor formulate his or her request.
3. If a request for Authorized program information is denied, DTSC agrees to provide the requestor the basis for the denial and will notify him or her of State judicial or administrative appeal procedures, including statutes of limitation.
4. A reduction or waiver of fees will be considered in connection with each request from a representative of the press or other communication medium, or from a public interest group. To the extent allowed by State law, DTSC agrees to reduce or waive the fee if it determines that a reduction or waiver of the fee is in the public interest because furnishing Authorized program information can be considered as primarily benefitting the general public.
5. DTSC agrees to make the fullest possible disclosure of Authorized program information to the public, without waiving any of the exemptions under the Federal FOIA recognized by DTSC, and under the California Public Records Act.

C. Confidentiality of Information

If a claim of confidentiality is asserted and cannot be resolved in the time period provided for an agency response to a request, DTSC agrees to notify the requestor of the confidentiality claim within 20 days. In addition, the requestor will be notified that the request was denied in order to allow a reasonable time period during which to resolve the confidentiality claim.

D. Oversight

1. DTSC agrees to keep records regarding denials of requests, made under the California Public Records Act or the Federal Freedom of Information Act, for Authorized program information (or a file containing copies of denial letters sent to requestors) which will be made available to EPA during DTSC review.
2. DTSC agrees to keep EPA fully informed of any proposed modifications to its basic statutory or regulatory authority, its forms, procedures, or priorities, as applied to RCRA section 3006(f).

XI. Changes to the DTSC Program

A. As part of any future rulemaking which may result in changes to the State's regulations which constitute the Authorized Program, DTSC agrees to consider the following factors in determining the manner in which to make the proposed regulatory changes applicable to facilities for which hazardous waste facilities permits have been issued.

1. The need for State review and approval prior to implementation.
2. The clarity of the applicability of a proposed standard to permitted facilities.
3. The clarity of the compliance standard for permitted facilities.
4. The universality of the proposed standard to permitted facilities.
5. The nature of the difference, if any, between the standard in existence and the proposed standard.
6. The need for permitted facilities to obtain approval from other government agencies.
7. The time necessary for a permitted facility to come into compliance with the proposed standard.
8. The stringency of the proposed change.
9. The potential impact of the proposed change on public health and the environment.

B. The State's initial decision regarding the applicability of proposed regulatory changes to permitted facilities and the supporting rationale will be made available to the public for comment during the public comment period for the regulations. EPA shall have the same opportunity to comment on the State's proposal as the public. DTSC will assess and address all comments received as part of the formal adoption of its regulations. EPA retains its authority to review the State's rulemaking decisions when proposed changes to the Authorized Program are submitted for review.

State of California
Department of Toxic Substances Control


U. S. Environmental Protection Agency
Region IX

BY:


Maziar Movassaghi
Acting Director

DATE: 10/29/09

BY:


Laura Yoshii
Acting Regional Administrator

DATE: 12/22/09